

1 Robert J. Drakulich, Esq. (SBN: 11954)
2 Nicholas J. Drakulich, Esq. (SBN: 1407)
THE DRAKULICH FIRM, APLC
3 245 E. Liberty St., Ste. 510
4 Reno, Nevada 89501
5 Phone: (775) 322 - 0673
Fax: (775) 322 - 2459
Email: rjd@draklaw.com
Email: njd@draklaw.com

6 Todd A. Walburg (Pro Hac Vice Pending)
7 **CUTTER LAW, P.C.**
8 401 Watt Avenue
9 Sacramento, CA 95864
Tel: (916) 290-9400
Fax: (916) 588-9330
Email: twalburg@cutterlaw.com

10 *Attorneys for Plaintiffs*
INGEBORG KLEIN and KARIN KLEIN

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA – LAS VEGAS DIVISION**

15 || INGEBORG KLEIN and KARIN KLEIN

16 || Plaintiffs,

V.

17 BAYER HEALTHCARE
18 PHARMACEUTICALS INC.; BAYER
19 CORPORATION; BAYER HEALTHCARE
20 LLC, BRACCO DIAGNOSTICS, INC.,
GUERBET LLC; MALLINKRODT INC.;
MALLINKRODT LLC; and LIEBEL-
FLARSHEIM COMPANY LLC,

Defendants.

Case No. 2:18-cv-01424-APG-GWF

JOINT ~~PROPOSED~~ DISCOVERY PLAN

(SPECIAL SCHEDULING REVIEW
REQUESTED)

23 COMES NOW Plaintiffs Ingeborg Klein and Karin Klein (“Plaintiffs”) and Defendants
24 BAYER HEALTHCARE PHARMACEUTICALS INC.; BAYER CORPORATION; BAYER
25 HEALTHCARE LLC; BRACCO DIAGNOSTICS, INC.; MALLINCKRODT INC.;
26 MALLINCKRODT LLC; GUERBET LLC; and LIEBEL-FLARSHEIM COMPANY LLC
27 (collectively “Parties”) by and through their counsel of record and propose the following
28 scheduling order pursuant to Fed. R. Civ. P. 26(f) and Local Rule 26-1(a).

INTRODUCTION

2 This is a product liability action against eight separate corporate defendants for products,
3 gadolinium-based contrast agents, that Plaintiffs allege to have caused personal injuries. With
4 multiple separate corporate defendants, different corporate departments within each defendant that
5 potentially have an involvement in the product at issue, complicated issues of science, regulatory
6 submissions, sales, marketing, and pharmacovigilance, as well as the likelihood of large quantities
7 of documents to be produced and reviewed, the period required for discovery will be somewhat
8 longer than a single defendant action.

9 Specially Appearing Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer
10 Corporation, and Bayer HealthCare LLC (collectively “Bayer”) have filed a Motion to Dismiss
11 Plaintiff’s Complaint in its entirety. Plaintiffs are agreeable to permit defendants to have their
12 motions resolved before commencing any discovery as such, the Parties request that the Court
13 hold all discovery obligations in abeyance until any and all Motions to Dismiss are resolved.

PROCEDURAL HISTORY

16 On August 1, 2018, Plaintiffs filed their complaint against Defendants Bayer HealthCare
17 Pharmaceuticals Inc., Bayer Corporation, Bayer HealthCare LLC, Bracco Diagnostics, Inc.,
18 Guerbet LLC, Mallinckrodt Inc., Mallinckrodt LLC, and Liebel-Flarsheim Company LLC.

19 Defendants Bayer HealthCare Pharmaceuticals Inc.; Bayer Corporation; Bayer HealthCare
20 LLC; Bracco Diagnostics, Inc.; Mallinckrodt Inc.; Mallinckrodt LLC; Guerbet LLC; and
21 Flarsheim Company LLC have been served with the complaint and summons.

22 On September 7, 2018, counsel for Bayer contacted counsel for Plaintiffs requesting a 30-
23 day extension to file its responsive pleading to the Complaint to which Plaintiffs agreed.

24 On September 19, 2018, Defendants Bracco Diagnostics, Inc., Mallinckrodt Inc., and
25 Mallinckrodt LLC filed their respective answers to the Complaint. Defendants Liebel-Flarsheim
26 Company LLC Guerbet LLC have an extension to answer and intend to file an answer to the
27 complaint by November 19, 2018 and have participated in this scheduling conference and
28 proposal.

1 On October 19, 2018, Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer
2 Corporation, and Bayer HealthCare LLC filed a Motion to Dismiss Plaintiff's Complaint.

3 On November 1, 2018, the parties held a discovery planning conference pursuant to FRCP
4 26(f) and Local Rule 26f-1. Included within these meets and confer efforts, Plaintiffs' counsel
5 forwarded this proposed scheduling order for defendants consideration and potential stipulation.
6 The parties have agreed upon the proposals set forth herein.

7 On November 2, 2018, Plaintiffs response to Defendants Bayer HealthCare
8 Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC's Motion to Dismiss is due.
9 In response to Defendants Bayer HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer
10 HealthCare LLC's Motion to Dismiss Plaintiffs plan on filing an opposition.

11

STAY OF DISCOVERY

13 The Parties request that the Court hold all discovery obligations in abeyance until any and
14 all Motions to Dismiss are resolved. When considering a request to stay discovery, "this court
15 must decide whether it is more just to speed the parties along in discovery and other proceedings
16 while a dispositive motion is pending, or whether it is more just to delay or limit discovery and
17 other proceedings to accomplish the inexpensive determination of the case." *Tradebay, LLC v.*
18 *eBay, Inc.*, 278 F.R.D. 597, 603 (D. Nev. 2011). Particularly because Bayer's pending motion
19 could result in a narrowing of issues, the parties to this action, or both, the Parties submit that it
20 will be best for the parties and the Court if discovery is stayed until any and all Motions to Dismiss
21 are resolved. In sum, the principles articulated in FRCP 1—justice, expediency, and efficiency—
22 support staying discovery while the motions to dismiss are pending.

23 The Parties propose the following as the Discovery Plan and Scheduling Order, including
24 the request to stay discovery pending resolution of the motions to dismiss before the district court.

25

PROPOSED SCHEDULE

27 1. Discovery shall be held in abeyance until disposition of Defendants Bayer
28 HealthCare Pharmaceuticals Inc., Bayer Corporation, and Bayer HealthCare LLC's Motion to

1 Dismiss as well as the disposition of any motion to dismiss by Defendants Liebel-Flarsheim
2 Company LLC Guerbet LLC if they file such a motion.

3 2. The Parties propose that within thirty (30) days after the Court enters an Order
4 ruling on all motions to dismiss, in the event any claim remains pending, the Parties shall submit a
5 joint pretrial discovery plan on all remaining discovery events, as well as a dispositive motion
6 briefing schedule. The Parties further agree to meet and confer to propose a stipulated protective
7 order regarding confidential information and an ESI protocol at that time.

8 3. The Parties emphasize that numerous United States District Courts have recently
9 delayed discovery until after resolution of motions to dismiss in cases claiming injuries from
10 gadolinium-based contrast agents, the products that Plaintiffs in this action allege that they used.
11 See, e.g., Dkt. No. 55, *Zelazny v. Bayer HealthCare Pharmaceuticals Inc. et al.*, No. 1:18-cv-
12 03246 (July 18, 2018) (“Discovery is stayed pending the resolution of the motions [to dismiss].”);
13 Dkt. No. 47, *Goodell v. Bayer HealthCare Pharmaceuticals Inc. et al.*, No. 1:18-cv-10694 (July 3,
14 2018) (directing parties to “exchange initial disclosures” and “submit a joint pretrial discovery
15 plan” “[w]ithin thirty (30) days after the Court enters an Order ruling on Bayer’s Motion to
16 Dismiss”); Dkt. No. 65, *McGrath v. Bayer HealthCare Pharmaceuticals Inc. et al.*, No. 1:18-cv-
17 02134 (July 11, 2018) (“The motion to stay [discovery] is granted.”).

18

19 DATED November 2, 2018.

20 By: /s/ Robert J. Drakulich, Esq.
21 Robert J. Drakulich, Esq. (SBN: 11954)
22 Nicholas J. Drakulich, Esq. (SBN: 1407)
23 **THE DRAKULICH FIRM, APLC**
24 245 E. Liberty St., Ste. 510
25 Reno, Nevada 89501
Phone: (775) 322 - 0673
Fax: (775) 322 - 2459
Email: rjd@draklaw.com
Email: nid@draklaw.com

26 C. Brooks Cutter (Pro Hac Vice Applicant)
27 Todd A. Walburg (Pro Hac Vice Applicant)
CUTTER LAW, P.C.
401 Watt Avenue
28 Sacramento, CA 95864
Tel: (916) 290-9400

1 Fax: (916) 588-9330
1 Email: twalburg@cutterlaw.com
2 Email: bcutter@cutterlaw.com
2 *Attorneys for Plaintiffs*

3 By: /s/ Robert M. Charles, Jr.
3 Robert M. Charles, Jr. (#6593)
4 J Christopher Jorgensen (#5382)
5 LEWIS ROCA ROTHGERBER CHRISTIE LLP
5 3993 Howard Hughes Parkway, Suite 600
6 Las Vegas, NV 89169
6 Telephone: (702) 949-8200
7 rcharles@lrrc.com
7 cjorgensen@lrrc.com

8 Jennifer Greenblatt (*pro hac vice* application forthcoming)
9 Edward Dumoulin (*pro hac vice* application forthcoming)
9 GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP
10 564 W. Randolph St., Suite 400
10 Chicago, IL 60661
11 Telephone: (312) 681-6000
11 jgreenblatt@goldmanismail.com
12 edumoulin@goldmanismail.com

13 *Counsel for Specially Appearing Defendants Bayer*
13 *HealthCare Pharmaceuticals Inc., Bayer Corporation,*
14 *and Bayer HealthCare LLC*

15 By: /s/ Paul S. Penticuff
16 Thomas N. Sterchi
16 Paul S. Penticuff
17 BAKER STERCHI COWDEN & RICE, L.L.C.
17 2400 Pershing Road, Suite 500
18 Kansas City, MO 64108
18 Phone: 816-471-2121
19 Fax: 816-472-0288
20 sterchi@bscr-law.com
20 penticuff@bscr-law.com

21 *Attorneys for Defendant Bracco Diagnostics, Inc*

23 By /s/ Joshua D. Cools
23 Joshua D. Cools (Nevada Bar #11941)
24 SNELL & WILMER L.L.P.
24 3883 Howard Hughes Parkway, Suite 1100
25 Las Vegas, Nevada 89169
25 Telephone: 702.784.5200
26 Facsimile: 702.784.5252
26 jcools@swlaw.com

27 *Attorneys for Defendants*
28 *Mallinckrodt Inc. and Mallinckrodt LLC*

1 By: /s/ Jamie L. Kendall
2 Jamie L. Kendall (*pro hac vice* application forthcoming)
3 Brad M. Welsh (*pro hac vice* application forthcoming)
4 THE KENDALL LAW FIRM PC
5 1201 County Line Road – Suite G
6 Bryn Mawr, Pennsylvania 19010
7 jkendall@tkfirm.com
8 bwelsh@tkfirm.com
9 Facsimile: 610.756.0202
10 Telephone: 610.756.0200

11
12 *Attorneys for Defendants Guerbet, LLC and*
13 *Liebel-Flarsheim Company*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IT IS SO ORDERED.

DATED: 11-8-2018



UNITED STATES MAGISTRATE JUDGE